IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRL.R.C.NO.651 of 2004
and
Crl.M.P.No.4081 of 2004

1.S.Ashokkumar
2. F.Amulraj .. Petitioners

-vs-

1. The Collector of Kancheepuram
District, office of the Collectorate
Kancheepuram

2. The Deputy Superintendent of Police
Civil Supplies C.I.D
Nandanam, Chennai-35 .. Respondents

This Revision is filed against the order dated 29.12.2003 in C.A.No.24 of 2002 on the file of the Principal Sessions Judge, Chengleput District.

For petitioners : : Mr.V.Balakrishnan

For respondents : : Mr.V.R.Balasubramaniam
Additional Public Prosecutor

O R D E R

The order passed by the learned Principal Sessions Judge, Chengleput in C.A.No.24 of 2002 is under challenge before this court by way of this revision petition.

2. An order passed by the District Collector, Kancheepuram in Na.Ka.No.61315/2001 for an order of confiscation of Benzene/Solvent weighing 19.930 Metric Tons and confiscation of lorry bearing Registration No.MH 04 Al 2016 and GJ 11-T-8992 in which the said quantity of Benzene was transported and also the imposition of fine of Rs.50000/- each to the owners of the tanker lorry were

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challenged in Cr.A.No.23 of 2002 and in Cr.A.No.24 o 2002 before the learned Principal Sessions Judge, Chengleput.

3. The appellants in Crl.A.No.23 of 2002 are the owners of the tanker lorries mentioned above . After hearing the learned counsel appearing for the appellants and after going through the order passed by the District Collector, Kancheepuram in Na.Ka.No.61315/2001 dated 21.2.2002,the learned Sessions Judge, Chengleput has allowed the appeal thereby setting aside the order of the District Collector, Kancheepuram thereby setting aside the fine of Rs.50,000/- imposed by the District Collector, in the above said proceedings.

4. Crl.A.No.24 of 2002 was dismissed by the learned Sessions Judge, Chengleput thereby confirming the order passed by the District Collector, Kancheepuram in confiscating benzene weighing 19.930 metric tons transported under the above said two tanker lorries. Aggrieved by the Judgment of the learned Sessions Judge, Chengleput in C.A.No.24 of 2002, this revision has been preferred by the revision petitioners herein who are the appellants in C.A.No.24 of 2002 on the file of the Principal Sessions Judge, Chengleput.

5. The learned counsel appearing for the revision petitioners would challenge the Judgment passed by the learned Sessions Judge, Chengleput in C.A.No.24 of 2002 on the ground that solvent/benzene was seized on 8.10.2001 by C.S.C.I.D. Officials under the order of confiscation was passed by the District Collector on 21.2.2002 and that on the date of seizure ie., on 8.10.2001, the amendment to Act 10 of 1955 Essential Commodities Act was not in force and the learned counsel would contend that only as per the amendment to the Act dated 21.11.2001(typed set of papers at page No.21) licence for consumption of 50 kilo litres of solvent and storage of 20 Kls of solvent is not required and that the amendment for possessing licence for 50KL of solvent for consumption and 20 KL of solvent for stock is required only from 1st December 2001 and that since the solvent/benzene in this case has been seized on 8.10.2001 itself, no licence is necessary.

6. Admittedly, the order for confiscation was passed on 21.2.2002 by the District Collector, Kancheepuram for the violation of required licence for possessing and transporting the solvent. On the date of passing of the order by the District Collector, Kancheepuram for confiscation of the solvent,/ benzene in this case, the amendment dated 21.11.2001 to the order of solvent,Reffinate and Slop(Acquisition, sale, storage and prevention of use in automobiles)Order, 2000 has already came into force. So it cannot be said that on the date of seizure of the solvent ie., on 8.10.2001, there is no amendment to the Solvent

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Reffinate and Slop(Acquisition, sale, storage and prevention of use in automobiles)Order, 2000, is in force requiring the revision petitioners to hold licence for possessing solvent/benzene. This has been dealt with by the learned Principal Sessions Judge in his Judgment at paragraph 11. It is in evidence that the first revision petitioner herein Thiru S.Ashokkumar has given a confession statement before the authorities to the effect that he is the owner of the benzene seized and has no licence to transport the same.

7. The learned counsel appearing for the revision petitioners would focus the attention of this Court to the mandatory violation of Rule 4(1)(a) of Solvent Reffinate and Slop(Acquisition, sale, storage and prevention of use in automobiles)Order, 2000 regarding the search and seizure and would contend that the provisions contemplated under Section100 of the Code of Criminal Procedure was not followed while effecting seizure of the benzene transported by the revision petitioners herein. But Section 100 of Cr.P.C. 1973 enumerates the procedure while a search is being conducted in a closed place. Pointing out 100(clause 4) of Cr.P.C. the learned counsel would contend that independent witnesses were not procured at the time of seizure,but in the seizure mahazar only Revenue Inspector and Village Administrative Officer were cited as witnesses and that they are not an independent witnesses as required under the above provisions of law. But a reading of the first information report will go to show that on information that two tanker lorries bearing registration No.MH 04 Al 2016 and GJ 11-T-8992 were parked in the national Highways near Pazhunjur(near Poonamallee) in a suspicious circumstances. C.S.C.I.D. Police rushed to the spot and found the said lorries parked opposite to the Quick Fill Petrol Bunk and in one of the lorries, the first revision petitioner S.Ashokkumar was found seated and on enquiry, he had confessed that two tanker lorries are containing the solvent/benzene and it belongs to him and he is not possessing any licence to possess the same and that the said confession statement was recorded in the presence of two independent witnesses by name Arunachalam and Subramaniam and thereafter only the seizure of the Benzene/solvent has been effected by the C.S.C.I.D.Police. Under such circumstances, it cannot be said that the seizure effected by the C.S.C.I.D. police is not in accordance with law.

8. The next contention of the learned counsel for the revision petitioners is that as per the rule 5(2) of Solvent Reffinate and Slop(Acquisition, sale, storage and prevention of use in automobiles)Order, 2000 not less than 750 ml is to be taken as sample from the seized solvent/benzene. But in this case as per First Information report only 18 samples with each 500 ml alone were taken as samples which is in violation of the above provisions of law. The purpose of taking sample is to find out through the

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chemical analysis whether the solvent seized is benzene or not? In this case the first revision petitioner who was present at the time of seizure of the benzene himself has given a voluntary confession statement before the two independent witnesses that the seized lorry contained solvent/benzene. Further nothing is available on record now to show that the analyst could not conduct the required test with the quantity ie., 500 ml sent as a sample. Under such circumstances, it cannot be said that the order passed by the District Collector, Kancheepuram is vitiated on that score.

9. The ratio relied on by the learned counsel appearing for the revision petitioners in Ponnaiah In re:(1989 Law Weekly (cri) 63) is not applicable to the present facts of the case because it has been held that failure to examine independent witness in a seizure under Section 4(1)(i) of Tamil Nadu Prohibition Act which has no bearing to the present facts of the case because here the seizure has been effected in a Highway from two tanker lorries the seized article of Benzene/solvent which has been seized in the presence of two independent witnesses.

10. The other limb of argument advanced by the learned counsel for the revision petitioners is that the second petitioner who is actually the owner of the seizure of benzene was not supplied with any copies in the proceedings which will vitiate the entire proceedings of the District Collector, Kancheepuram. For this proposition of law, the learned counsel appearing for the revision petitioner would rely on a decision reported in Selvan and others-v- State in all Crl.Appeals(1991 L.W.Cri 83) wherein the dictum laid down is that the failure to supply to the accused copy of the mahazar and to file the notification-confiscation of lorry and paddy not legal. Admittedly, the second revision petitioner is not an accused in this case . The first revision petitioner alone is accused . The second revision petitioner Amulraj is not a party before the District Collector, Kancheepuram who has passed the impugned order in Na.Ka.No.61315/2001 . Even before the first appellate Court, he got himself impleaded by way of application claiming that he is the owner of the seizure solvent/benzene. Under such circumstances, as a matter of right the second revision petitioner cannot claim that he must be furnished with the copy of the material records since he is not an accused in the case. So the above said citation will not be applicable to the present facts of the case.

11. The ratio decidenti in Pradeep narayan Madgaonkar etc etc-v- State of Maharashtra(JT 1995(7) S.C.350) will also be not applicable to the present facts of the case because the said cited ratio relates to search of the premises -panch witnesses who were not independent or respectable witnesses of the same locality, the search conducted by the investigation officer is said to be

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illegal on the ground that it violates the provision contemplated under Section 100(4) of Terroristis and Disruptive Activities (Prevention) Act 1987. Here in the case on hand, seizure was not conducted in a closed premises but was only conducted before the two independent witnesses of the locality in a highways from two tanker lorries.

12. In M.perumal Pillai and others(1981 L.W.Cri 67), the dictum laid down is that before conducting a search by entering into the premises the investigation officer must have reason to believe that any contravention of the provision of Tamil Nadu Paddy and rice(Regulation of Trade) order1974 has been committed or is being committed or is about to be committed. Since there was no material on record placed by the prosecution to show that the investigating officer had previous information regarding the contravention of the provision of the Tamil Nadu Paddy and rice (Regulation of Trade) order 1974 by the accused given the search conducted by him was held to be illegal. In this case, it is seen from the first information report that only on information that two tanker lorries have been parked in the National Highways near Poonamallee in suspicious circumstances, the police of CSCID rushed to the place and found those two tanker lorries parked in front of the Quick Fill petrol bunk and the first revision petitioner S.Ashokkumar had given a confession statement admitting that those tanker lorries contained a solvent/benzene and that it belongs to him and he has no licence to possess. Under such circumstances, the above said decision has no bearing to the present facts of the case.

13. The next ratio decidenti relied on by the learned counsel appearing for the revision petitioners under B.Seetharamayya Gupta-v-The District Revenue Officer(AIR 1977 Andhra Pradesh 103) is not applicable to the present facts of the case because in all the case which falls under Section 6A of the Essential Commodities Act 1955 a portion of the confiscated commodities was ordered to be returned on the ground that there was sufficient materials on record produced by the petitioner/accused to show that a portion of the confiscated commodity was raised in his own land and they are not the commodities intended for public distribution.

14. Taking into consideration of the relevant materials placed before him the learned Principal Sessions Judge has rightly come to the conclusion that the order of the District Collector, Kancheepuram in Na.Ka.No.61315/2001 dated 21.2.2002 directing the confiscation of the seized solvent/benzene weighing 19.930 metric tons has rightly dismissed the appeal in C.A.No.24 of 2002 preferred by the revision petitioners herein.

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15. Under such circumstances, I do not find any reason to interfere with the order of the learned Sessions Judge in C.A.No.24 of 2002 on the file of the Principal Sessions Judge, Chengleput. The point is answered accordingly.

16. In fine, the revision is dismissed confirming the Judgment of the learned Sessions Judge in C.A.No.24of 2002 on the file of the Principal Sessions Judge, Chengelput. Consequently,connected Crl.M.P.No.4081 of 2004 is also dismissed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

sg

To

1.The Principal Sessions Judge, Chengleput.
2. The Public Prosecutor, High Court, Madras
3. The Collector of Kancheepuram, Office of Collectorate, Kancheepuram
4. The Deputy Superintendent of Police, CSCID ,Kilpauk,Madras-600010.

1 cc to Mr.V.Balakrishnan, Advocate, Sr. 41122

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